IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1123 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL NAGARBHAI MAGANBHAI

Versus

COMMISSIONER OF HIGHER EDUCATION

Appearance:

MR RANA for MR KS JHAVERI for Petitioners

MR PR JOSHI AGP for Respondent Nos.1 & 2

M/S PATEL ADVOCATES for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 04/08/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioners herein were the teachers in

Gujarat Arts, Science and Commerce College, a Government College affiliated to the Gujarat University. Both the teachers were born in the year 1940 and accordingly were retired from service in the year 1998 on attaining the age of 58 years. In view of the prevailing policy of the Government, they were continued in service after they attained the age of superannuation till the end of the academic term i.e. till 31st October, 1998. Feeling aggrieved by their retirement at the age of 58 years, the petitioners have preferred the present petition.

It is the claim of the petitioners that they were teachers in a College affiliated to the Gujarat University and were, therefore, governed by the statutes/Regulations/Ordinance of the University. The Government, under its Resolution dated 7th September, 1998, had accepted a scheme of revision of payscale recommended by the University Grants Commission and accepted by the Central Government. Under the said Resolution, the age of retirement of the teachers in the Colleges affiliated to the University has been enhanced to 62 years. The petitioners also were entitled to the said benefit of enhanced age of superannuation and had a right to continue in service till they attained the age of 62 years.

The Resolution dated 7th September, 1998, has been issued by the State Government in view of the letter dated 27th July, 1998, of the Government of India, Ministry of Human Resource Development, Department of Education. The said Resolution has been issued in respect of the revision of payscales of the teachers in the Universities and Government and non-Government affiliated colleges and of Librarians and Physical Education Personnel. One of the conditions of the said scheme i.e. paragraph- (vi) of the Scheme deals with age of superannuation, and reads as under :

(VI) AGE OF SUPERANNUATION :

The age of superannuation of University and College teachers would be 62 years and thereafter no extention in service should be given. However, it will be open to a University or College to re-employ a superannuated teacher according to the existing guidelines framed by the UGC upto the age of 65 years ".

It is not disputed that under the Bombay Civil Services Rules, which govern the service conditions of the Government servants including the teachers in the Government Colleges, the prescribed age of retirement is that of 58 years.

The question that, therefore, arises is whether the service conditions of the teachers in the Government Colleges shall be governed by the rules framed by the Government in that behalf or shall they be governed by the conditions of affiliation made by the University under the powers conferred upon it under section 20 of the Gujarat University Act, 1949. The question is no more res-integra. The Division Bench of this Court in the matter of THAKORELAL PRANLAL DESAI VS. STATE OF GUJARAT & ORS ({1994} 1, GLR, 481) was called upon to consider and decide the very question. The Bench in no uncertain terms held that service conditions of such teachers would be governed by the rules framed by the State Government, and not by the conditions of affiliation determined by the University. In paragraph-5 of the judgment, the Bench has held that - "Practically, the above discussion settles the issue and negatives the pleas of the petitioners to insist for the age of superannuation happening only on their completing 60 years ". The court further held that - " But, the question that relevantly arises for our consideration is, is the Act a piece of legislation governing to regulate recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the State. The Rules are those made under the proviso to Article 309 to regulate the recruitment and conditions of service of such persons. There is no dispute that the petitioners will fall within the category of such persons only. The Act, certainly, would not come within the purview of the Act to regulate the recruitment and conditions of service of such persons. We have no ambiguity in our mind that the Act is not a piece of legislation governing this subject, namely, State Public Services. The Act is one concerned with the subject of Education including University ..... The pronouncement of the Apex Court speaking on the subject and guiding us in the manner noted above does not enable us to accept the theory put forth by the learned Counsel for the petitioners that the Resolution of the Executive Council of the Gujarat University referred to above, must hold the field and the Rules must give way for it ".

In view of the above binding judgment, the claim made by the petitioners herein requires to be rejected.

I am informed by the learned advocate Mr. Rana that in view of the pendency of this petition, the petitioners have been denied the pension and the Gratuity which should otherwise be due and payable to them on their retirement from service. In that view of the matter, the respondents are directed to process the pension papers of the petitioners herein and forward the same to the concerned authority for issuance of pension payment order, and pay other retiral benefits which may have been withheld on account of pendency of this petition, within a period of one month from the date of receipt of copy of this order. Subject to the above direction, the petition is dismissed. Rule is discharged. Registry is directed to send the writ forthwith.

(MS R.M.DOSHIT J)

JOSHI